IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: J U D G M E N T ::

D.B. CRIMINAL APPEAL NO.05/1999
(Kheta Ram Vs. State of Rajasthan)

D.B. CRIMINAL APPEAL UNDER SECTION 374(2) Cr.P.C. AGAINST THE JUDGMENT DATED 21.12.1998 PASSED BY THE LEARNED ADDITIONAL SESSIONS JUDGE, BARMER IN SESSIONS CASE NO.2/98.

DATE OF JUDGMENT : 28th NOVEMBER, 2007

P R E S E N T

HON'BLE MR. JUSTICE BHAGWATI PRASAD
HON'BLE MR. JUSTICE DEO NARAYAN THANVI

Mr. J.S.Choudhary, for the appellant.
Mr. J.P.S. Choudhary, Public Prosecutor.

BY THE COURT : (PER MR. THANVI,J.)

1. This appeal is directed against the judgment dated 21.12.1998 passed by the learned Additional Sessions Judge, Barmer, whereby, he convicted accused appellant Kheta Ram for offence under Section 302 IPC and sentenced him to imprisonment for life and to pay a fine of Rs.200/-, in default of

payment of fine to further undergo one month's rigorous imprisonment.

2. Facts leading to this appeal are that on 27.10.97 one Tikma Ram lodged FIR Ex.P-6 at Police Station Baytu that his elder brother accused appellant Kheta Ram was married 15 years back with the daughter of Mana Ram. He was having no issue except one daughter, who died at the age of six years. According to the FIR, his elder brother was living with his wife Smt. Meera separately in a hut and because of their enmity, wife of accused appellant Kheta Ram used to stay at his maternal house. Fifteen days' back, accused appellant Kheta Ram put fire on the hut because of some domestic quarrel. On 26.10.97, accused appellant Kheta Ram locked his wife in the hut. When he came to know about this, he told Kheta Ram to open the lock but he refused. Upon this, he again came with Pradhan Chetan Ram and one Uda Ram for opening the door. On the next day i.e. on 27.10.97, at about 11 am, he heard cries of Smt. Meera. He thereupon went in the hut and saw one *datra* in the hand of his brother. Blood was coming from the forehead of Smt. Meera. He intervened and later on his mother Smt. Rahu also came and intervened. Smt. Meera became unconscious on account of blow given by accused appellant Kheta Ram with datra. He, therefore called his neighbour Arjun Ram and by taking jeep of Narna

Ram, reached at the hospital, where, Smt. Meera died.

3. Upon this report, police registered the case for offence under Section 302 IPC and commenced investigation. During investigation, blood stained clothes and datra were recovered and after usual investigation, accused appellant Kheta Ram was challaned in the court of Judicial Magistrate, Barmer, who committed the case to the court of Sessions. The learned Additional Sessions Judge, Barmer framed the charge against accused appellant Kheta Ram for offence under Section 302 IPC, to which he pleaded not guilty. Prosecution examined 17 witnesses. Statement of accused appellant was recorded under Section 313 Cr.P.C. He produced one Hadman Ram DW-1 in his defence. After hearing the arguments, the learned trial Judge convicted and sentenced the accused appellant as indicated above.

4. It is contended by the learned counsel for the accused appellant that from the evidence of prosecution witnesses, it appears that they have brought two stories about killing of Smt. Meera. Original witnesses of occurrence and FIR have named only accused appellant Kheta Ram but they have turned hostile and, thereafter, deceased Meera's parents and brother have been examined, who have implicated not only accused appellant

but also his mother, sister and brother Tikma Ram, who lodged the FIR. Thus, there is an apparent un-corroboration and material contradiction in the statements of these eye witnesses on the story of prosecution. The learned trial Judge has convicted the accused appellant simply on the basis of the statements of Jetha Ram PW-9 and Moda Ram PW-10, who were neighbours and developed new story by naming three more persons in the incident, in addition to the recovery of blood stained datra.

5. On the other hand, the learned Public Prosecutor has supported the judgment of the learned trial court.

6. We have re-appreciated the evidence brought on record. It is true that the person, who lodged the FIR Ex.P-6 at Police Station Baytu is Tikma Ram PW-2, who is the elder brother of accused appellant Kheta Ram but he has been turned hostile. In the FIR, he has stated that he went at the hut of Smt. Meera with Pradhan Chetan Ram and one Uda Ram but Chetan Ram PW-1 has stated in his cross examination that his evidence is hear say. He is the witness of site plan Ex.P-1, dead body memo Ex.P-3 and Ex.P-4. He has also proved *odna and angiy*a recovered by the police vide Ex.P-5. He has of-course said in his examination in chief that he went with Uda Ram at the behest of

Tikma Ram as Kheta Ram's wife was locked in the hut. He further said in his statement that on the next day, in the morning at about 10.00, due to scuffle, accused appellant Kheta Ram killed his wife and ran away but in the cross examination, he has said that his evidence is based on someone's saying. Smt. Rahu PW-3 mother, Lala PW-4 brother, Arjun Ram PW-5, who is the neighbour and Bhura Ram PW-6, brother of accused, who went with Sarpanch one day prior to the incident have been turned hostile. Harlal Singh PW-7, Ghewar Chand PW-8, Mangi Lal PW-11, Hindu Singh PW-14, Bhawani Singh PW-16 and Ghanshyam PW-17 are the police officers, who participated in the investigation. Dr.Devendra Singh PW-8 has conducted the post mortem vide Ex.P-16. Now, the evidence of Jetha Ram PW-9, Moda Ram PW-10, Mana Ram PW-12 and Smt. Gavri PW-13 remains.

7. The learned trial Judge has basically relied upon the evidence of Jetha Ram PW-9 and Moda Ram PW-10, who are said to be the neighbours of the accused appellant. Both these witnesses have said that when they heard cries *'mare mare'*, they went there and saw that accused appellant Kheta Ram along with Tikma Ram, Bhura and Smt. Rahu were beating deceased Smt. Meera in the hut and accused appellant Kheta Ram was having datra in his hand. When these witnesses were

confronted with their previous statements, they said that the fact of killing deceased Smt. Meera by four persons is not there in the statements recorded under Section 161 Cr.P.C. The statement of Jetha Ram PW-9 recorded under Section 161 Cr.P.C. is Ex.D-1 and the statement of Moda Ram PW-10 is Ex.D-2. In both these statements, it has not been stated that Smt. Meera was killed by four persons. In their statements, they have only said about Kheta Ram, who killed his wife with datra. It appears that this theory of killing by four persons has been developed later on when the eye witnesses turned hostile. Similar statements were given by Mana Ram PW-12, Smt. Gavri PW-13 and Dhanna Ram PW-15. They all are relatives of deceased Smt. Meera in the parental side being father, mother and brother, but they have developed the story of prosecution by implicating three more persons, including the informant of the case. When these three witnesses were confronted with their police statements, in which, they implicated only Kheta Ram, they said that they have not narrated this to the police. The statements recorded before the Investigating Officer under Section 161 Cr.P.C. are Ex.D-3 of Mana Ram PW-12, Ex.D-4 of Smt. Gavri PW-13 and Ex.D-5 of Dhanna Ram PW-15. Therefore, from the evidence led by the prosecution, it appears that during trial, they have developed all together two versions to implicate the accused appellant. First version was of causing datra blow on the head of deceased by

accused appellant and the witnesses in this regard have already turned hostile, including the informant and the second version is implicating of four persons, belonging to the in-laws of the deceased, who were not originally implicated by the parents and gave statement to the police on the basis of suspicion and hearsay.

8. Thus, the whole case suffers from infirmities, contradictions and un-corroboration. When two versions are coming with regard to causing death of the deceased, it is very difficult for the Court to ascertain as to who is the real person, who killed the deceased.

9. That apart, datra which is said to have been used in inflicting blow on the head of the deceased has not been found fit to be detected with regard to blood group in the FSL Report Ex.P-27, upon which, the learned trial Judge has relied upon and passed the order of conviction. Merely, finding blood on the recovered clothes and weapon cannot be the basis to connect the accused appellant with the commission of crime, unless it is proved that these blood stained clothes and weapon are of the same blood group with that of accused and the deceased. In our view, the finding of the learned trial Judge on this basis is totally perverse and contrary to law. There is no evidence to link the

accused appellant with the commission of crime like murder of his wife under Section 302 IPC.

10. Consequently, this appeal is allowed. The judgment dated 21.12.1998 passed by the learned Additional Sessions Judge, Barmer, convicting accused appellant Kheta Ram for offence under Section 302 IPC is set aside. Accused appellant Kheta Ram is acquitted from the charges levelled against him. He is on bail, his bail bonds stand cancelled.

(DEO NARAYAN THANVI),J. **(BHAGWATI PRASAD),J.**

ms rathore